

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TRANSAUCTION LLC, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. 2:08-cv-232
§
BIDZ.COM, INC.; EBAY INC.; § JURY TRIAL DEMANDED
OVERSTOCK.COM, INC.; UBID.COM
HOLDINGS, INC.; and
WINECOMMUNE.COM, LLC, §
§
Defendants. §

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff TRANSAUCTION LLC files this Original Complaint against Defendants BIDZ.COM, INC.; EBAY INC.; OVERSTOCK.COM, INC.; UBID.COM HOLDINGS, INC.; and WINECOMMUNE.COM, LLC, alleging as follows:

I. THE PARTIES

1. Plaintiff TRANSAUCTION LLC ("TransAuction") is a Texas limited liability company. It has its principal place of business in Newport Beach, California, and also maintains a place of business in Frisco, Texas.
2. Defendant BIDZ.COM, INC. ("Bidz.com") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 3562 Eastham Drive, Culver City, California 90232. Bidz.com may be served with process through its registered agent, Lawrence Y. Kong, 3562 Eastham Drive, Culver City, California 90232.

3. Defendant EBAY INC. ("eBay") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 2145 Hamilton Avenue, San Jose, California 95125. eBay may be served with process through its registered agent, National Registered Agents, Inc., 16055 Space Center, Suite 235, Houston, Texas 77062.

4. Defendant OVERSTOCK.COM, INC. ("Overstock.com") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 6350 South 3000 East, Salt Lake City, Utah 84121. Overstock.com may be served with process through its registered agent, Jonathan E. Johnson, III, 6350 South 3000 East, Salt Lake City, Utah 84121.

5. Defendant UBID.COM HOLDINGS, INC. ("uBid.com") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 8725 West Higgins Road, 9th Floor, Chicago, Illinois 60631. uBid.com may be served with process through its registered agent, National Registered Agents, Inc. 160 Greentree Drive, Suite 101, Dover, Delaware 19904.

6. Defendant WINECOMMUNE.COM, LLC ("WineCommune.com") is a California limited liability company with a principal place of business at 7305 Edgewater Drive, Suite D, Oakland, California 94621. WineCommune.com may be served with process by serving its registered agent, Michael Stajer, 7305 Edgewater Drive, Suite D, Oakland, California 94621.

II. JURISDICTION AND VENUE

7. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction of the action under Title 28 U.S.C. §1331 and §1338(a).

8. The Court has general and specific personal jurisdiction over each Defendant, and venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b). Each Defendant has substantial contacts with the forum as a result of substantial business conducted within the State of Texas and within this District. Specifically, each Defendant conducts business with customers residing in this District through its interactive website(s) that provide guaranteed and/or bonded online auctions. Additionally, each Defendant has committed and continues to commit acts of patent infringement in this State and this District by utilizing the methods taught in United States Patent No. 7,343,339 (“the ‘339 patent”) to provide such guaranteed and/or bonded online auctions to consumers in Texas and, particularly, the Eastern District.

III. PATENT INFRINGEMENT

9. On March 11, 2008, the ‘339 patent was duly and legally issued for an “Electronic Bond and Guaranty Process and Business Method.” A true and correct copy of the ‘339 patent is attached hereto as Exhibit “A.” By virtue of assignment, TransAuction owns all right, title, and interest in and to the ‘339 patent and possesses all rights of recovery under it, including the right to collect damages for all relevant times, including the right to prosecute this action.

10. Defendants have infringed and continue to infringe, directly, contributorily, and/or through the inducement of others, the ‘339 patent by providing their respective guaranteed and/or bonded online auctions in accordance with the claimed methods.

11. TransAuction has been damaged as a result of Defendants’ infringing conduct. Defendants are, thus, liable to TransAuction in an amount that adequately compensates it for their infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

12. Upon information and belief, inventor Shelton E. Harrison corresponded with representatives from Defendant eBay concerning eBay's potential interest in purchasing the patent application which later issued as the '339 patent. Thus, upon information and belief, Defendant eBay is aware of the '339 patent, has knowledge of the infringing nature of its activities, has nevertheless continued its infringing activities, and its infringing activities have been and continue to be willful.

IV. JURY DEMAND

TransAuction hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

V. PRAYER FOR RELIEF

TransAuction requests that the Court find in its favor and against Defendants, and that the Court grant TransAuction the following relief:

- a. Judgment that one or more claims of United States Patent No. 7,343,339 have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringements Defendants have contributed and/or by others whose infringements have been induced by Defendants;
- b. Judgment that Defendants account for and pay to TransAuction all damages to and costs incurred by TransAuction because of Defendants' infringing activities and other conduct complained of herein;
- c. That Defendant eBay's infringements be found to be willful from the time that Defendant eBay became aware of the infringing nature of its respective products and services, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- d. That TransAuction be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- e. That the Court declare this an exceptional case and award TransAuction its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and

f. That TransAuction be granted such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,



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